CH. 30
INSANITY - MENTALLY ILL – INTOXICATION
§30-1 Insanity
§30-1(a)
Generally
United States Supreme Court

Kahler v. Kansas, 589 U.S. ____ (2020) Historically, two types of insanity defenses have been recognized, those based on moral incapacity and those based on cognitive incapacity. Moral incapacity is the inability to distinguish between right and wrong; cognitive incapacity is a person's inability to understand what he or she is doing is wrong.

Here, defendant was convicted of the murders of four family members. Kansas provides only a cognitive incapacity insanity defense, specifically that the defendant lacked the requisite mental state for the charged offense. Kansas also allows a defendant to raise mental illness after conviction, in an effort to obtain a reduced sentence of imprisonment or commitment to a mental health facility.

Defendant challenged Kansas's failure to provide a moral incapacity insanity defense as a denial of due process. The Supreme Court, consistent with its prior decision in **Clark v. Arizona**, 548 U.S. 735 (2006), held that insanity rules are a matter of State choice. Due process does not require that a State provide any specific test of legal insanity, and therefore upheld Kansas's insanity statute here.

The dissent would have concluded that by not providing a moral incapacity defense, Kansas had eliminated "the core" of the insanity defense. Insanity is premised on a defendant's mental illness. The dissent would have found that moral incapacity was firmly entrenched in the common law insanity defense precisely because mental illness more often affects a person's moral judgment, not their ability to form intent.

McWilliams v. Dunn, ___ U. S. ___, 137 S. Ct. 1790, 198 L. Ed. 2d 341 (2017) Under **Ake v. Oklahoma**, 470 U. S. 68 (1985), an indigent defendant who demonstrates that his sanity at the time of the offense is a significant factor at trial is entitled to access to a competent psychiatrist to conduct an appropriate examination and to assist in evaluation, preparation, and presentation of the defense. The prosecution failed to meet the requirements of **Ake** at a death penalty hearing where, at the request of defense counsel, the trial court appointed a psychiatrist to examine defendant but refused to grant a continuance or appoint an expert to consult with defense counsel concerning defendant's psychological records. **Ake** requires not merely an evaluation, but also expert assistance in reviewing mental health records.

The court rejected the prosecution's argument that **Ake** was satisfied by the voluntary assistance of a psychologist who helped the defense "in her spare time" and who apparently suggested that the defense request additional testing. "Even if the episodic assistance of an outside volunteer could relieve the State of its constitutional duty to ensure an indigent defendant access to meaningful expert assistance," there is nothing on the record to indicate that the volunteer was available during the sentencing hearing or provided help at that stage.

Because the State failed to satisfy the basic requirements of **Ake** at the death hearing, the cause was remanded for further proceedings.

Clark v. Arizona, 548 U.S. 735, 126 S.Ct. 2709, 165 L.Ed.2d 842 (2006) Due process does not require any particular formulation of the insanity defense. Thus, a State is free to define the insanity defense solely in terms of the second prong of the **M'Naghten** test - that defendant was unable to appreciate the criminality of his actions, without including the first

prong - that a mental defect prevented defendant from understanding the nature of his acts.

Even under the second prong, defendant's ability to understand the nature of his acts is relevant. "[I]f a defendant did not know what he was doing when he acted, he could not have known that he was performing the wrongful acts charged as a crime."

Also, due process was not violated by an Arizona rule that expert testimony about a defendant's mental incapacity or mental disease or defect may be admitted only if relevant to an insanity defense, and not to negate the *mens rea* required for the offense.

Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985) An indigent defendant is entitled to a State-paid psychiatrist where he shows that insanity will be a significant factor at trial or sentencing. See also, **People v. Kegley**, 175 Ill.App.3d 335, 529 N.E.2d 1118 (2d Dist. 1988).

Illinois Supreme Court

People v. Taylor, 2023 IL 128316 Prior to trial on a charge of attempt murder of a peace officer, defendant was examined for insanity, as well as fitness for trial. He was found fit, and the doctor concluded that defendant did not meet the criteria for an insanity defense. Upon subsequently reviewing additional records from a prior psychiatric hospitalization of defendant, the doctor issued an addendum to his report but did not alter his conclusion. The doctor also sent defense counsel a handwritten note which stated that defendant was "a borderline case" and that "if his parents can afford it, you may wish to seek a second opinion." Defense counsel sought the appointment of a second expert, at the State's expense, referencing the doctor's note. That request was denied, and defendant was ultimately found guilty.

The trial court did not abuse its discretion in denying defendant's request for a second psychiatric evaluation on the issue of insanity. Under **Ake v. Oklahoma**, 470 U.S. 68 (1985) a defendant is entitled to access to a competent expert when his sanity is to be a significant factor at trial. This means the psychiatrist will examine defendant and assist in the evaluation, preparation, and presentation of the defense. Defendant argued that, under **McWilliams v. Dunn**, 582 U.S. 183 (2017), appointment of a second expert was required because here, the first did not assist in evaluation, preparation, and presentation of his defense. The court distinguished **McWilliams**, however, because there defendant had not had access to an expert to evaluate records and a psychiatrist's report that were received just before the defendant's sentencing hearing. Here, on the other hand, the psychiatrist had conducted two evaluations of defendant and consistently opined that defendant was not insane but was eligible for a finding of guilty but mentally ill. While this was not defendant's desired outcome, it did not rise to the level of his being denied constitutionally required assistance of an expert.

People v. Harrison, 226 Ill.2d 427, 877 N.E.2d 432 (2007) Because a verdict of not guilty by reason of insanity is an "acquittal," defendant may not appeal the predicate finding that he committed the acts in question. An NGRI verdict absolves defendant of any criminal liability, and defendant has other means to challenge a post-trial finding that he is in need of inpatient mental health services.

Williams v. Staples, 208 Ill.2d 480, 804 N.E.2d 489 (2004) A defendant who is found not guilty by reason of insanity, but in need of inpatient mental health services, can be involuntarily committed for an indefinite period not to exceed the maximum sentence, less

good time, he could have been required to serve before becoming eligible for parole had he been convicted of the most serious crime charged. 730 ILCS 5/5-2-4(b). The date on which the maximum term expires is known as the "**Thiem**" date. See, **People v. Thiem**, 82 Ill.App.3d 596, 403 N.E.2d 647 (1st Dist. 1980).

Under 730 ILCS 5/5-2-4(h), an insanity acquittee who is in need of mental health services but no longer requires inpatient treatment may be conditionally released for five years under conditions set by the trial court. Under the law applicable to defendant's case, a single three-year extension of the release period could be sought. A person who violates conditional release and is subject to involuntary admission may be held in DHS in a secure setting, unless there are compelling reasons for a different placement.

People v. Jurisec, 199 Ill.2d 108, 766 N.E.2d 648 (2002) Conditional release of an individual who is acquitted by reason of insanity and committed to the Department of Mental Health may be revoked where the State shows, by clear and convincing evidence, that defendant is again subject to involuntary admission or in need of inpatient mental health services. If defendant needs continuing mental health treatment, but not on an inpatient basis, the trial court may modify the conditions of release to assure both defendant's satisfactory progress and the public's safety.

The conditional release of an insanity acquittee may be modified or revoked if the relevant goals of release are not being met, "even if the insanity acquittee bears no personal culpability for the failure." Because discontinuation of a medication that was a condition of conditional release might have affected defendant's mental health and presented a danger to public safety, the trial court was justified in finding that the conditions of the conditional release were not being fulfilled, although defendant's failure to take the medication was due solely to jail officials' refusal to administer it.

Under the plain language of 730 ILCS 5/5-2-4(i), however, the trial court erred by revoking conditional release upon finding that the purposes of conditional release were not being achieved. A finding that the conditions of conditional release are not being fulfilled is only the first step in determining whether conditional release should be terminated. The court must then conduct a hearing to "reconsider the grant of conditional release" and decide whether, "in light of expert testimony on defendant's current mental status, there is clear and convincing evidence that defendant's involuntary readmission to the Department is required or whether the conditional release should be continued, with or without modification of the conditions of the original release."

People v. Belcher, 199 Ill.2d 378, 769 N.E.2d 920 (2002) Where a psychiatric expert found that at the time of the offense defendant was sane under a definition of insanity subsequently found to have been passed in violation of the single-subject rule, but specifically testified that defendant would have been insane under the prior law, defendant's guilty plea was entered under a misapprehension of the applicable law. Because defendant might not have pleaded guilty had he known that he would have been found insane under the statute which actually applied to his case, he should be allowed to move to vacate his guilty plea.

People v. Ramsey, 192 Ill.2d 154, 735 N.E.2d 533 (2000) Defendant who was convicted under an amendment to the insanity defense that was later held unconstitutional as a violation of the single-subject rule was entitled to a new trial, at which the trial court was to apply the version of the insanity defense in effect before the unconstitutional amendment was enacted.

Although the legislature subsequently reenacted the same changes to the insanity

defense, applying the reenacted legislation at the retrial would violate the *ex post facto* clause by depriving defendant of an affirmative defense and increasing his burden of proof. See also, **People v. Terry**, 329 Ill.App.3d 1104, 769 N.E.2d 559 (4th Dist. 2002) (P.A. 90-593 (eff. June 19, 1998), which re-enacted amendments to the insanity defense which were found unconstitutional in **People v. Reedy**, 186 Ill.2d 1, 708 N.E.2d 1114 (1999), did not violate the single subject rule of the Illinois Constitution).

People v. Burton, 184 Ill.2d 1, 703 N.E.2d 49 (1998) After defendant requested a fitness examination, the trial court appointed a psychiatrist to evaluate defendant for both fitness to stand trial and sanity at the time of the offense. The psychiatrist gave an opinion that defendant was fit to plead or stand trial, but deferred any opinion on sanity and offered to conduct a further evaluation if desired. Defendant pleaded guilty without requesting a further evaluation. The trial judge did not err by failing to require the expert to evaluate defendant's sanity.

A sanity evaluation is generally required where defendant provides notice that he may rely on an insanity defense or the facts and circumstances of the case justify a reasonable belief that an insanity defense may be raised at trial. Defendant did not give notice that he intended to raise an insanity defense, and by pleading guilty waived any such defense.

People v. Allen, 101 Ill.2d 24, 461 N.E.2d 337 (1984), which found that the trial court erred by failing to order an evaluation of a defendant's sanity over his objection, was distinguished. Ordinarily, defendant must raise an insanity defense or claim mental illness before a sanity evaluation is required. Apart from the unusual circumstances of **Allen**, in which defendant refused to cooperate with counsel and where there was substantial evidence of insanity, the trial court is not required to *sua sponte* inquire into defendant's sanity as a precondition to accepting a guilty plea from a defendant who has been found fit to stand trial.

Radazewski v. Cawley, 159 Ill.2d 372, 639 N.E.2d 141 (1994) Four individuals who had been found not guilty by reason of insanity and involuntarily committed to mental health institutions petitioned for writs of *mandamus* because their petitions for release had not been heard within 30 days. 730 ILCS 5/5-2-4(e) provided that when an insanity acquittee petitioned for discharge or conditional release, "the court *shall* set a hearing to be held within thirty days."

However, if the petitioner requests a continuance or defense counsel is unprepared to proceed within 30 days, the time limitation is tolled. **Note**: Statute has been amended to require that hearing be set within 120 days. P.A. 90-593 (eff. June 19, 1998).

People v. Britz, 123 Ill.2d 446, 528 N.E.2d 703 (1988) The evidence showed that if defendant took drugs or alcohol before the crime, he did so voluntarily and not because of a permanent or fixed mental disorder. Thus, there was no evidence of a "chronic or permanent type of mental disease attributable to chronic substance abuse," and no basis for an insanity defense based on voluntary intoxication.

People v. Buggs, 112 Ill.2d 284, 493 N.E.2d 332 (1986) Defendant was convicted of two murders (for the deaths of his wife and child) arising from setting fire to his own home. Defendant admitted the acts involved, but raised an insanity defense.

It was not error for the State to bring out his prior "bad acts" on cross-examination of a defense psychiatrist. When insanity is raised, "almost every aspect in a defendant's life is relevant." In addition, wide latitude is allowed in the cross-examination of an expert witness.

People v. Anderson, 113 Ill.2d 1, 495 N.E.2d 485 (1986) An examining psychiatrist may testify about the statements made by the person examined, including a criminal defendant, where such statements are relied upon in forming the diagnosis. See also, **Melecosky v. McCarthy**, 115 Ill.2d 209, 503 N.E.2d 355 (1986) (examining physician). Compare, **People v. Britz**, 123 Ill.2d 446, 528 N.E.2d 703 (1988) (experts properly prohibited from testifying about statements defendant made during examinations where diagnosis was based solely on defendant's statements; allowing such testimony would open the door for a defendant to tell his story without being cross-examined).

People v. Free, 94 Ill.2d 378, 447 N.E.2d 218 (1983) Toxic psychosis induced by voluntary intoxication of drugs or alcohol is not a "mental disease or mental defect" that amounts to legal insanity. Furthermore, a voluntary intoxication or drugged condition precludes the insanity defense unless: (1) the mental disease or defect is traceable to the habitual or chronic use of drugs or alcohol, and (2) such use results in a "settled" or "fixed" permanent type of insanity. Where there was no evidence of habitual or chronic use or a "settled" or "fixed" disease or defect, the trial judge acted properly by instructing the jury on voluntary intoxication and by refusing instructions on insanity.

People v. Ward, 61 Ill.2d 559, 338 N.E.2d 171 (1975) An expert witness may utilize the reports of others in forming an opinion regarding sanity, so long as the reports are the sort reasonably relied upon by experts in the field.

People v. Smothers, 55 Ill.2d 172, 302 N.E.2d 324 (1973) Expert testimony is not required to raise the issue of insanity. See also, **People v. Childs**, 51 Ill.2d 247, 281 N.E.2d 631 (1972).

People v. Newbury, 53 Ill.2d 228, 290 N.E.2d 592 (1972) There is no right to a bifurcated trial on the issue of sanity.

People v. Ford, 39 Ill.2d 318, 235 N.E.2d 576 (1968) A defendant may both deny commission of the crime and raise the affirmative defense of insanity.

People v. Myers, 35 Ill.2d 311, 220 N.E.2d 297 (1966) Where defendant was examined by five psychiatrists, he was not denied equal protection or due process because he lacked funds to obtain further examinations. Nothing in the record suggested that additional examinations would produce a different result.

The legislature did not intend to permit an insanity acquittee who violates conditional release to be held past his **Thiem** date.

The statutory sections in question are ambiguous, as both are mandatory and could be interpreted in at least three ways. The legislative debates established that conditional release was intended to apply primarily to insanity acquittees who either did not need mental treatment or were not subject to involuntary commitment. The legislature did not intend that §5-2-4(h) could be used to extend the court's jurisdiction over an in-custody acquittee beyond the **Thiem** date.

Further, P.A. 93-78 (eff. January 1, 2004), which provided that conditional release could be extended in five-year increments not to exceed the acquittee's **Thiem** date, did not establish a legislative intent to change the law, which must be presumed to have permitted the courts to exercise jurisdiction beyond the **Thiem** date. Although a material change to a statute is ordinarily presumed to have been intended to change the law. P.A. 93-78's explicit

reference to the **Thiem** date was "merely incidental" to an amendment to change the length of the conditional release period. Thus, the legislature could not be presumed to have intended to change what it believed to be the existing law.

Illinois Appellate Court

People v. Marcus, 2023 IL App (2d) 220096 Defendant pled guilty but mentally ill to one count of first-degree murder in exchange for the dismissal of other charges and a sentence of 45 years of imprisonment. Subsequently, defendant filed a post-conviction petition alleging ineffective assistance of counsel for pressuring defendant to forego an insanity defense and failing to inform him that two mental health experts opined that an insanity defense was supported. Defendant alleged that he would not have pled guilty and would have insisted on going to trial had he known about the expert opinions. Following an evidentiary hearing, the trial court denied defendant's petition.

In the guilty plea context, counsel renders deficient performance where he fails to ensure that defendant's plea is knowing and voluntary. To establish prejudice, defendant must show that there was a reasonable probability that, absent counsel's deficient performance, he would not have pled guilty and instead would have chosen to proceed to trial.

The trial court's denial of defendant's petition was not manifestly erroneous. Defendant's claim that defense counsel failed to disclose expert opinion on the issue of insanity was contradicted by defense counsel's testimony as well as defendant's own statements, during the plea hearing, that he had reviewed one expert's report, had discussed with counsel his ability to raise an insanity defense, and had chosen not to pursue that defense. Defendant repeatedly confirmed that he understood the court's questions at the plea hearing and did not have any questions of his own. Further, it was not deficient performance for counsel to advise defendant that obtaining an insanity acquittal would be a difficult task. Counsel's advice in that regard was reasonably competent and was not legally erroneous.

Even assuming deficient performance by counsel, defendant failed to establish prejudice. The record overwhelmingly supported the conclusion that defendant did not want to take his case to trial. Counsel discussed the possibility of an insanity defense and had defendant evaluated by two separate experts. But, defendant pushed to have his case resolved in a timely fashion and told the experts that he did not want to go to trial because he wanted to spare his daughter from that process. And, at the plea hearing, the court confirmed that defendant did not wish to raise an insanity defense. Accordingly, the appellate court affirmed the trial court's denial of defendant's petition.

People v. McCarron, 2022 IL App (3d) 200404 In 2006, defendant was convicted of first degree murder and concealment of a homicidal death in the strangulation of her 3-year-old autistic daughter. At trial, defendant presented an insanity defense, supported by the testimony of two experts that defendant suffered recurrent major depressive disorder. The jury rejected that defense. The Appellate Court affirmed defendant's conviction on direct appeal.

In 2018, defendant filed a *pro se* post-conviction petition, based on a change in the law which gave individuals the right to present a claim based on post-partum depression (PPD) and post-partum psychosis (PPP). Counsel was appointed to represent defendant on the petition and moved for the appointment of experts related to PPP and PPD. The circuit court denied the motion and dismissed defendant's petition, and defendant appealed.

The Appellate Court reversed. The court held that the trial court erred in construing the statutory definition of PPD and PPP as limiting their existence at one year past a

defendant's youngest child's birthday. The statutory definitions of PPD and PPP contain general descriptions of how the conditions can present themselves and when they tend to develop. Specifically, PPD "usually occurs during pregnancy and up to 12 months after delivery," and PPP "can occur during pregnancy and up to 12 months after delivery." 725 ILCS 5/122-1(a)(3). The court was wrong to interpret the word "occur" as meaning that PPD and PPP both start and conclude within the time frames discussed in the statute. Instead, "occur" refers to when something generally begins or originates. The statutory definitions do not impose a temporal limitation on PPD and PPP in the manner determined by the trial court. Thus, defendant's claim was not barred by the fact that her older daughter's death occurred just over two years after the date of her younger daughter's birth.

The trial court also erred when it held that any evidence of PPD would be cumulative. While defendant's mental health was addressed during trial and sentencing, no evidence was presented that she may have suffered from PPD at the time she killed her daughter. PPD is a particularized form of depression, such that evidence that defendant suffered from PPD would not have been cumulative of the more generalized evidence of depression that the jury did hear.

Dismissal of defendant's petition was reversed, and the matter was remanded for further proceedings, including the appointment of experts as requested in defendant's motion.

People v. Roland, 2022 IL App (1st) 173013 Defendant was convicted of attempt murder for firing a gun at a police officer. Before trial, he was found fit for trial and legally sane at the time of the offense, though evidence showed the evaluating physicians were not able to obtain medical records from multiple institutions that had treated defendant in the past. Defendant testified at trial that he pointed a gun at officers, and fired in the air, in an attempt to commit "suicide by cop."

Defendant's post-conviction petition alleged ineffective assistance of counsel for failing to obtain medical records. The petition alleged he was treated at a mental health center for four years around the time of the offense, and prescribed medication. The circuit court dismissed at the second stage, and an Appellate Court majority reversed. The petition made a substantial showing of unreasonable performance, where defendant attached a document from the hospital, rejecting his request for medical records, that appeared to corroborate his claim that the records do exist. The petition made a substantial showing of prejudice because the records would have supported defendant's defense theory – defendant's inability to form the requisite intent to kill.

The dissent believed that the defense theory was a diminished capacity defense, which does not exist in Illinois, and therefore would have upheld the dismissal.

People v. Ferguson, 2021 IL App (1st) 201013 When a defendant is found not guilty by reason of insanity, the trial court must determine his or her maximum period of commitment, also know as the **Thiem** date. See **People v. Thiem**, 82 Ill. App. 3d 956 (1980). Pursuant to 730 ILCS 5/5-2-4(b), the **Thiem** date "shall not exceed the maximum length of time the defendant would have been required to serve, less credit for good behavior as provided in Section 5-4-1...had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity."

Here, defendant argued that his **Thiem** date should be reduced by the 180 days of discretionary good conduct credit that he may earn under 730 ILCS 5/3-6-3(a)(3). The Appellate Court disagreed. The discretionary credit is not "credit for good behavior as provided in Section 5-4-1" and therefore does not apply to advance defendant's **Thiem** date.

The court noted, however, that the Director at the Department of Human Services should be informed that defendant's commitment may be reduced by up to 180 days if the Director finds defendant eligible for such credit.

People v. Comier, 2020 IL App (1st) 170500 Trial court did not err in ruling that defendant would be required to submit to examination by a State expert before he would be permitted to introduce testimony of his own expert that he suffered from mental illness, even though defendant was not raising insanity defense. 725 ILCS 5/115-6 provides that the court shall order defendant to submit to such an examination, on the State's motion, where defendant intends to assert defenses of insanity, guilty but mentally ill, or intoxicated or drugged condition, but also "if the facts and circumstances of the case justify a reasonable belief that the aforesaid defenses may be raised."

Here, the court opined that testimony from defendant's expert would be the equivalent of presenting an insanity defense, warranting examination by a State expert. And, even if such an examination was not required under the circumstances, nothing in the statute prohibits the court from ordering an examination where defendant places his mental status at issue, even if not to the extent of raising a mental status defense. It is well-established that requiring that a defendant submit to such an examination before allowing testimony of a defense expert does not violate defendant's fifth amendment rights.

A dissenting justice disagreed and would have held that the trial court erred in conditioning the admissibility of defendant's expert's testimony on defendant's submitting to a mandatory examination by another expert. The dissent did not believe any of the provisions of Section 115-6 applied here where the defense specifically disclaimed any intent to pursue an insanity defense.

People v. Burnett, 2016 IL App (1st) 141033 Although a defendant must prove by clear and convincing evidence that he is not guilty by reason of insanity, he needs to present only "some evidence" of insanity to properly raise the defense. The "some evidence" standard is enough evidence which, if believed, would be sufficient for a reasonable jury to find by clear and convincing evidence that defendant is not guilty by reason of insanity.

Therefore, an insanity instruction should be given where sufficient evidence has been presented to support a jury finding of insanity by clear and convincing evidence. Neither psychiatric testimony nor expert opinion is necessary to justify an insanity instruction.

Here, the trial court abused its discretion by refusing to instruct the jury on insanity. First, the trial court made a legal error where it appeared to believe that the question of sanity could not arise where defendant's expert found the defendant fit to stand trial with medication and gave no opinion of sanity. Fitness for trial and insanity involve different standards and concern the defendant's mental state at different time periods.

In addition, the record revealed sufficient evidence to justify an instruction on insanity. Defendant had a mental illness at the time of the occurrence and made several statements to police which showed confusion and irrational thinking. Although defendant fled after the accident in which the decedent was killed and testified that he thought he had done something "wrong," that statement may have meant only that he knew he had damaged the van and not that the decedent had died. In addition, when defendant saw police officers, he walked toward them instead of fleeing.

Although the State's two experts believed that defendant was sane at the time of the offense and defendant's expert gave no opinion on sanity, the reports of all three experts stated that defendant suffered from multiple mental illnesses. Finally, defendant's IQ was within "borderline range of cognitive functioning."

Because the trial court erred by failing to instruct the jury on insanity, defendant's convictions for first degree murder and vehicular hijacking were reversed and the cause remanded for a new trial.

People v. Steele-Kumi, 2014 IL App (1st) 133068 A criminal defendant who is acquitted by reason of insanity and found by the trial court to be in need of mental health services on an inpatient basis is to be committed for a period not to exceed "the maximum length of time that the defendant would have been required to serve, less credit for good behavior . . . , before coming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity." 730 ILCS 5/5-2-4(b).

The court rejected the State's argument that where a defendant is acquitted by reason of insanity on multiple charges which would have carried mandatory consecutive sentences had the defendant been convicted, the maximum commitment period should be equal to the term that would be served on two consecutive sentences rather than the maximum sentence for the single most serious crime. The court concluded that the plain language of §5-2-4(b) specifies that the commitment period is based upon the maximum sentence for the single most serious crime, and that the legislature would have used different statutory language had it intended for the commitment period to be based on multiple offenses.

People v. Dwight, 368 Ill.App.3d 873, 859 N.E.2d 189 (1st Dist. 2006) Under Illinois law, a criminal defendant is legally insane if, as the result of a mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct. Defendant has the burden to prove by clear and convincing evidence that he is not guilty by reason of insanity. To raise an insanity defense, defendant must present sufficient credible evidence to allow a reasonable jury to find in his favor.

A jury instruction on insanity is required where a reasonable jury could find by clear and convincing evidence that due to a mental illness, defendant lacked substantial capacity to appreciate the criminality of his conduct. In determining whether the evidence justifies an affirmative defense instruction, the trial court "must look for the presence of evidence that supports the instruction, avoiding the temptation to make judgments about the weight of [the evidence]."

The refusal to give a jury instruction on insanity is reviewed for abuse of discretion. An insanity instruction may be appropriate despite the absence of any opinion evidence that defendant was incapable of appreciating the criminality of his conduct. "Where there is sufficient evidence . . . to support the defense, the absence of opinion evidence is immaterial." The trial court may base a finding concerning an insanity defense solely on lay testimony; expert testimony is not required.

The trial court abused its discretion by refusing to give an insanity instruction. The evidence showed that at the time of the crime, defendant's behavior had changed "markedly." Defendant's appearance had become "unkempt," and he frequently spoke in a loud voice and engaged in "a great deal" of cursing. There was also evidence that defendant was paranoid, anxious, frantic, and depressed at the time of the crime. Defendant told members of his family that the FBI was trying kill him and that the CIA was shooting at him. In addition, he claimed to be God and pounded on a door until his hand bled.

Furthermore, the facts of the offense were "bizarre," and each medical witness found that defendant suffered from a mental illness (although none were of the opinion that he was insane at the time of the offense). Because the evidence was adequate to place the issue of defendant's sanity before the jury, the trial court erred by failing to give an insanity

instruction.

People v. Wells, 294 Ill.App.3d 405, 690 N.E.2d 645 (1st Dist. 1998) Under 20 ILCS 2630/5(a), a defendant who is "acquitted or released without being convicted" may bring a petition requesting that the record of his arrest be expunged. Under §2630/5, defendants found not guilty by reason of insanity are eligible to apply for expungement of their arrest records.

The trial court did not abuse its discretion, however, by denying the petition for expungement by a defendant who had been found not guilty by reason of insanity. Expungement is not a matter of right, but rests in the discretion of the chief judge. Before granting expungement, the judge must be satisfied that the "individual's interest in being free from the criminal record outweighs the State's interest in retaining it." Among the factors to be considered are: (1) the strength of the State's case, (2) the State's reasons for wanting to retain the records, (3) the petitioner's age, criminal record and employment history, (4) the amount of time between the arrest and the petition to expunge, (5) any specific adverse consequences that the petitioner will endure if expungement is denied, and (6) any other factors.

Turner v. Campagna, 281 Ill.App.3d 1090, 667 N.E.2d 683 (1st Dist. 1996) Where there was a lengthy, unexplained delay (72 months) between verdict of not guilty by reason of insanity and commitment hearing required for insanity acquittee, the State was required to seek commitment through civil proceedings rather than by utilizing the relaxed standard for insanity acquittee.

People v. Lowitzki, 285 Ill.App.3d 770, 674 N.E.2d 859 (1st Dist. 1996) In Illinois, pathological gambling may not be raised as a defense to a nongambling offense.

People v. Harlacher, 262 Ill.App.3d 1, 634 N.E.2d 366 (2d Dist. 1994) Chapter 38, ¶115-6 (725 ILCS 5/115-6), which provides that a defendant must submit to an examination by the State's expert where the defense intends to enter a plea of guilty but mentally ill or claim insanity, intoxication or drugged condition, applies only in the situations specified.

People v. Kapsalis, 186 Ill.App.3d 96, 541 N.E.2d 1323 (1st Dist. 1989) The statutory definition of insanity is not invalid on the ground that the terms "mental disease" and "mental defect" are undefined.

People v. Ford, 118 Ill.App.3d 59, 454 N.E.2d 1095 (1st Dist. 1983) Defendant is not entitled to have the jury instructed that a verdict of not guilty by reason of insanity results in a hearing to determine whether he is subject to involuntary commitment. See also, **People v. Meeker**, 86 Ill.App.3d 162, 407 N.E.2d 1058 (5th Dist. 1980) (court declined to decide whether such an instruction might be appropriate in special circumstances, such as where the prosecutor argues to the jury that defendant will be set free if found not guilty by reason of insanity).

People v. Pitts, 104 Ill.App.3d 451, 432 N.E.2d 1062 (1st Dist. 1982) During *voir dire* at defendant's trial for murder, defense counsel asked the judge to inquire whether the veniremembers: (1) had "any feeling or viewpoint concerning the defense of insanity," and (2) agreed that "a person should not be held responsible for his acts if he is not capable to conform his conduct to the requirements of the law." The trial judge refused to ask these questions.

"The better procedure would have been for the trial judge to allow the questions," but any error was harmless in light of overwhelming evidence.

People v. Taylor, 110 Ill.App.3d 112, 441 N.E.2d 1231 (1st Dist. 1982) In deciding the issue of sanity, the trier of fact may credit the opinion of one expert witness over that of another.

People v. Nichols, 70 Ill.App.3d 748, 388 N.E.2d 984 (5th Dist. 1979) Defendant was deprived of his constitutional right to compel the attendance of witnesses where the trial court refused to provide funds to obtain a psychiatric evaluation of defendant's sanity at the time of the offense. Although two psychiatrists had examined defendant concerning his fitness to stand trial, insanity as a defense "differs markedly from fitness to stand trial," and "it is vitally important that the examining psychologist or psychiatrist know the purpose for which the examination and testing is being conducted."

People v. Lipscomb, 46 Ill.App.3d 303, 360 N.E.2d 988 (4th Dist. 1977) Defendant was tried for several offenses relating to the murder of his girlfriend and an assault against a bystander who attempted to intervene. The jury received verdict forms of guilty and not guilty for each offense (murder, aggravated battery, involuntary manslaughter and aggravated assault), plus one general verdict form of not guilty by reason of insanity. During deliberations, the jury asked whether it could find defendant sane during the assault against the bystander and insane when he shot his girlfriend. Over defense objection, the judge answered "no."

The judge erred. Not only could the jury properly find defendant sane and then insane as mentioned above, but a verdict form of not guilty by reason of insanity should have been given for each offense.

People v. Banks, 17 Ill.App.3d 346, 308 N.E.2d 261 (1st Dist. 1974) The trier of fact is not obligated to accept the ultimate opinions of experts.

§30-1(b)
Burden of Proof - Sufficiency of Evidence

United States Supreme Court

Leland v. Oregon, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed.2d 1302 (1952) State statute requiring defendant to prove insanity defense beyond a reasonable doubt does not violate due process. See also, **Rivera v. Delaware**, 429 U.S. 877, 97 S.Ct. 226, 50 L.Ed.2d 160 (1976); **Patterson v. New York**, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977).

Illinois Supreme Court

People v. Odle, 128 Ill.2d 111, 538 N.E.2d 428 (1988) Defendant, who raised an insanity defense, contended that because he had the burden of proof with respect to that defense, he was entitled to surrebuttal closing argument. Trial court has discretion to grant the defense surrebuttal closing argument on the issue of insanity. Here, however, the trial court did not abuse its discretion by denying surrebuttal; defendant "points to no error of law or actual prejudice resulting from the trial court's decision." See also, **People v. Engram**, 193 Ill.App.3d 511, 549 N.E.2d 1333 (2d Dist. 1990) (proper to allow the State to open and close final argument when the issue of insanity is raised).

Illinois Appellate Court

People v. Plackowska, 2020 IL App (2d) 171015 Trial court did not err in rejecting insanity defense where experts reached conflicting opinions on the question of whether defendant lacked the substantial capacity to understand the criminality of her conduct when she killed her 8-year-old son, a 5-year-old girl whom she babysat, and two dogs. The defense expert testified that she acted at the behest of a hallucination in the form of a black shadow, the State's expert explained that defendant's description of the hallucination was not authentic, noting that she gave differing descriptions of the hallucination over time and that if it were "real," the hallucination would have issued commands to defendant in her native language (Polish) rather than in English as defendant described. The court also cited efforts by defendant to conceal her criminal acts after the fact as evidence that she was not insane.

People v. Romero, 2018 IL App (1st) 143132 Where the court hears conflicting expert opinions on the question of insanity at a bench trial, it is up to the trial court to resolve those conflicts. The trial court may properly consider observations of lay witnesses in conjunction with expert testimony in deciding the question of sanity. The trial court's finding that defendant was not insane was not against the manifest weight of the evidence. Even though defendant's expert had more experience and had reviewed one additional set of medical records in forming his opinion, the trial court could accept the State's expert's testimony where the record showed the court gave due consideration to all of the evidence.

Defendant's challenge to the court's questioning of the defense expert was not forfeited even though defendant had not objected to the specific questioning in the trial court. At the time the court pronounced its verdict, and again in his motion for new trial, defendant did object to the judge's reliance on the answers to his questions. Given that the basis of the objection was the court's conduct, the forfeiture rule was relaxed. However, the trial court did not demonstrate bias or assume the role of the prosecutor in questioning the defense expert. Instead, the court's questions were geared toward clarifying portions of the expert's testimony. The fact that the court did not ask similar questions of the State's expert did not show bias; in an insanity case, it is the defense expert's opinion that is of paramount concern.

People v. Burnett, 2016 IL App (1st) 141033 The law presumes that all persons are sane. However, that presumption is rebutted where the issue of defendant's sanity is clearly raised. A defendant is legally insane if, at the time of the offense, as a result of a mental disease or defect he lacked a substantial capacity to appreciate the criminality of his conduct. Although a defendant must prove by clear and convincing evidence that he is not guilty by reason of insanity, he needs to present only "some evidence" of insanity to properly raise the defense. The "some evidence" standard is enough evidence which, if believed, would be sufficient for a reasonable jury to find by clear and convincing evidence that defendant is not guilty by reason of insanity.

Therefore, an insanity instruction should be given where sufficient evidence has been presented to support a jury finding of insanity by clear and convincing evidence. Neither psychiatric testimony nor expert opinion is necessary to justify an insanity instruction.

Although not controlling, federal case law construing an insanity statute that is similar to the Illinois statute holds that the trial court must construe the evidence of insanity most favorably to the defendant. Whether the trial court erred by failing to instruct the jury on insanity is determined under the abuse of discretion standard.

Here, the trial court abused its discretion by refusing to instruct the jury on insanity. First, the trial court made a legal error where it appeared to believe that the question of sanity could not arise where defendant's expert found the defendant fit to stand trial with

medication and gave no opinion of sanity. Fitness for trial and insanity involve different standards and concern the defendant's mental state at different time periods.

In addition, the record revealed sufficient evidence to justify an instruction on insanity. Defendant had a mental illness at the time of the occurrence and made several statements to police which showed confusion and irrational thinking. Although defendant fled after the accident in which the decedent was killed and testified that he thought he had done something "wrong," that statement may have meant only that he knew he had damaged the van and not that the decedent had died. In addition, when defendant saw police officers, he walked toward them instead of fleeing.

Although the State's two experts believed that defendant was sane at the time of the offense and defendant's expert gave no opinion on sanity, the reports of all three experts stated that defendant suffered from multiple mental illnesses. Finally, defendant's IQ was within "borderline range of cognitive functioning."

Because the trial court erred by failing to instruct the jury on insanity, defendant's convictions for first degree murder and vehicular hijacking were reversed and the cause remanded for a new trial.

People v. Kando, 397 Ill.App.3d 165, 921 N.E.2d 1166 (1st Dist. 2009) The Appellate Court reversed defendant's conviction for guilty but mentally ill of attempt murder and aggravated battery. The court found that the trial court acted contrary to the manifest weight of the evidence by rejecting defendant's insanity defense.

The State need not present expert testimony when an insanity defense is raised, but may rely on the evidence that has been introduced and reasonable inferences from that evidence. Expert testimony may be rejected by the trier of fact if it concludes that, based on lay testimony, the defendant was sane. In doing so, the court should consider whether the lay observations were made shortly before or after the crime, whether defendant had a plan to commit the crime, and whether defendant took steps to avoid detection of the crime.

A finding of sanity may be based on lay opinion if such opinions are based on personal observation of the defendant.

The weight given to an expert witness's opinion on sanity cannot be determined arbitrarily, however; it must be based on the reasons given and the facts supporting that opinion. Thus, while the trier of fact may chose to reject or give little weight to expert psychiatric testimony, the power to do so is not unbridled. "[A] trial court may not simply draw different conclusions from the testimony of an otherwise credible and unimpeached expert witness."

The trial court had no basis to reject the testimony of two appointed expert psychiatrists, who testified that defendant could not have appreciated the criminality of his conduct while he was under a religious delusion that he was fighting with the devil. The court stressed that the experts did not fail to consider relevant information concerning the defendant or ignore information that was contrary to their opinion. In addition, both experts were employed by the Circuit Court of Cook County and examined the defendant pursuant to appointment, not because they had been hired by the defense.

The court also noted the voluminous evidence of defendant's mental illness, which had lasted for at least 16 years and resulted in more than 27 psychiatric hospitalizations. In addition, defendant had taken heavy dosages of anti-psychotic medications, and had been rendered fit to stand trial only by taking an anti-psychotic medication that was considered a drug "of last resort" due to its side effects. Finally, when defendant missed even a single dose of that medication, he suffered relapses and immediately demonstrated symptoms of psychosis.

The court rejected the State's argument that the testimony of the two experts was rebutted by the testimony of the State's four lay witnesses. The court found that the lay testimony was insufficient to overcome the clear and convincing evidence offered by the experts, and in many respects supported the insanity defense.

People v. Janecek, 185 Ill.App.3d 89, 540 N.E.2d 1139 (4th Dist. 1989) Following a bench trial, defendant was convicted of reckless driving and criminal damage to property. Defendant raised the affirmative defense of insanity.

A police officer testified that he arrested defendant after a 24-mile high speed chase. When defendant was stopped, she drove into the police car parked in front of her. The officer testified that defendant did not appear to be under the influence of alcohol or drugs.

Among other things, defendant told the officer she was on her way to Peoria but her car wanted to go to Indianapolis. Defendant claimed she had not heard any sirens, although she had seen the various lights on the police cars, that she ran cars off the road because she had been drag racing, and that she knew she was breaking the law.

A psychiatrist testifying for the defense said that defendant had delusions and hallucinations at the time of the incident, was fearful and believed she was in danger, had a mental disease or defect, and was insane. Defendant's husband testified that defendant had been hospitalized for psychiatric treatment on 18 occasions, would drive the car until it ran out of gas (over 150 miles away), and in the weeks prior to the incident was afraid someone was going to harm her and talked about pyramids and "catching electric rays."

The trial judge's rejection of the expert witness's conclusions was against the manifest weight of the evidence. The testimony by the State and defense witnesses indicated that defendant was confused, incoherent, and suffering from delusions and hallucinations. Thus, the testimony of the State and defense witnesses substantially supported the conclusion of the psychiatrist.

People v. Gettings, 175 Ill.App.3d 920, 530 N.E.2d 647 (4th Dist. 1988) A psychiatrist concluded that defendant was legally insane at the time of the incident but was competent to stand trial.

On the day of trial, defense counsel advised the judge that he had spoken to defendant at great length about an insanity plea and a possible plea of guilty but mentally ill, and that defendant had "emphatically" instructed counsel not to pursue either. The judge accepted a waiver of the insanity defense and proceeded to trial.

In an issue of first impression in Illinois, the Appellate Court held that the trial judge erred by accepting defendant's waiver of an insanity defense without first determining whether it was knowingly and intelligently entered. An appropriate inquiry would include a short discussion between the judge and defendant, addressing such issues as: (1) whether defendant has been advised of the availability of the defense; (2) what reason defendant has for waiving the defense; (3) whether defendant understands the consequences of waiving an insanity defense; and (4) whether defendant understands the consequences of a successful insanity defense.

People v. Quay, 175 Ill.App.3d 965, 530 N.E.2d 644 (4th Dist. 1988) The standard of review regarding a finding of insanity is whether the finding was against the manifest weight of the evidence.

People v. Hickman, 143 Ill.App.3d 195, 492 N.E.2d 1041 (5th Dist. 1986) Where the offense occurred before January 1, 1984, the State has the burden of proving sanity. Applying the post-1983 burden of proof to such a defendant would violate the *ex post facto* clause.

§30-1(c)
Decisions Under Prior Law
Illinois Supreme Court
People v. Gacy, 103 Ill.2d 1, 468 N.E.2d 1171 (1984) Defendant was convicted of 33 counts of murder and was sentenced to death. The evidence of sanity was conflicting and supported the jury's verdict. See also, **People v. Silagy**, 101 Ill.2d 147, 461 N.E.2d 415 (1984) (the evidence of sanity was conflicting, and the jury's verdict was not palpably erroneous).

People v. Carlson, 79 Ill.2d 564, 404 N.E.2d 233 (1980) Whether defendant was sane at the time of the offense presents a question of fact for the trier of fact, whose decision will not be reversed unless it is so improbable or unsatisfactory as to raise a reasonable doubt of defendant's sanity.

People v. Grant, 71 Ill.2d 551, 377 N.E.2d 4 (1978) At his trial for aggravated battery, defendant presented evidence that he had been in a psychomotor epileptic seizure at the time of the acts. The jury was given insanity instructions, but no "involuntary conduct" instruction was requested or given.

The failure of the trial judge to *sua sponte* instruct the jury on involuntary conduct did not deprive defendant of a fair trial. Defendant defended the case on the theory of insanity, not involuntary conduct, and did not ask for an involuntary conduct instruction.

People v. Redmond, 59 Ill.2d 328, 320 N.E.2d 321 (1974) The presumption of sanity is not overcome unless the evidence raises a reasonable doubt of defendant's sanity; thus, the State is only required to introduce evidence to prove an accused sane where defendant presents evidence which raises a reasonable doubt of sanity.

People v. Newbury, 53 Ill.2d 228, 290 N.E.2d 592 (1972) When there is conflicting expert testimony on issue of sanity, the determination is left to the jury. In such circumstances, a finding that defendant was sane will be upheld when there is "sufficient evidence" for the jury to conclude beyond a reasonable doubt that defendant was sane.

Illinois Appellate Court
People v. McDarrah, 175 Ill.App.3d 284, 529 N.E.2d 808 (2d Dist. 1988) Chapter 38, ¶6-2(e) is not unconstitutional because it requires a defendant to prove insanity by a preponderance of the evidence. **Note:** Statute currently requires defendant to prove insanity by clear and convincing evidence. **People v. Dwight**, 368 Ill.App.3d 873, 859 N.E.2d 189 (1st Dist. 2006).

People v. Moore, 147 Ill.App.3d 881, 498 N.E.2d 701 (1st Dist. 1986) To prove insanity by a preponderance of the evidence, defendant must "prove it more likely than not that he was insane when he committed the offenses charged."

An insanity instruction is warranted "only if there is sufficient evidence to support a jury's finding of insanity by a preponderance of the evidence." Here, the evidence did not require that the instruction be given.

People v. Arndt, 86 Ill.App.3d 744, 408 N.E.2d 757 (1st Dist. 1980) Because the evidence "convincingly establishes" that defendant was suffering from a recognized mental illness which caused a manic-depressive state, a reasonable doubt of sanity was shown.

People v. Zemola, 9 Ill.App.3d 424, 292 N.E.2d 195 (1st Dist. 1972) A psychiatrist who examined defendant five months after the crime could properly state opinion on defendant's sanity at the time of the crime. However, it is improper to ask expert to state opinion in terms of whether defendant was insane; instead, question should be whether defendant lacked substantial capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

People v. Haun, 71 Ill.App.2d 262, 217 N.E.2d 470 (4th Dist. 1966) Where there was evidence that defendant was insane, it was improper to instruct the jury that all persons are presumed to be sane until the contrary is shown.

§30-2
Intoxication

Note: Under 720 ILCS 5/6-3, as amended by P.A. 92-466, eff. January 1, 2002, voluntary intoxication is no longer a defense to criminal conduct; only *involuntary* intoxication may serve as a defense.

Illinois Supreme Court

People v. Taliani, 2021 IL 125891 The trial court did not err in denying defendant leave to file a second successive post-conviction petition alleging that he had newly discovered evidence of actual innocence in the form of a previously unavailable defense. Specifically, defendant alleged that he suffered involuntary intoxication from the unwarned side effects of two prescription medications – BuSpar and Desyrel. Defendant cited **People v. Hari**, 218 Ill. 2d 275 (2006), to support his contention that this defense was not available in Illinois until long after his 1994 trial on charges of first degree murder and aggravated battery with a firearm.

To obtain leave to file a successive petition claiming actual innocence, a defendant must support his petition with evidence that is "newly discovered, material and not merely cumulative, and of such conclusive character that it would probably change the outcome on retrial." While defendant knew at the time of trial that he had been taking the prescribed medications, it was not known at that time that when taken together these two medications could cause "serotonin syndrome," which could lead to mental status changes. Defendant argued that this fact, coupled with the unwarned side-effects/involuntary intoxication defense, constituted newly discovered evidence of actual innocence.

The Court rejected defendant's argument and instead adopted the State's position that a new defense is a new theory, but it is not new evidence of innocence. Defendant's claim was not based on any new evidence. In prior court filings, defendant had argued trial counsel's ineffectiveness for failing to present evidence of serotonin syndrom *at his trial*, thus indicating that such evidence actually was available at that time. And, even if the possibility of serotonin syndrome could be deemed newly discovered evidence, defendant failed to provide any evidence that he was actually suffering from it here. Defendant's motion and supporting documentation showed that serotonin syndrome could result from the

combination of medications he was taking, but not that it always resulted or more specifically that it had occurred here.

People v. Hari, 218 Ill.2d 275, 843 N.E.2d 349 (2006) Under Illinois law, the affirmative defense of involuntary intoxication exists where an intoxicated or drugged condition is "involuntarily produced and deprives [defendant] of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law" (720 ILCS 5/6-3). The legislature intended the term "involuntarily produced" to include an unexpected, adverse reaction to prescription medicine, and does not require some "trick, artifice, or force." Cases which adopted such a requirement were distinguishable on their facts.

The trial court erred by refusing to give an involuntary intoxication instruction at defendant's trial for first degree and attempt first degree murder. Defendant presented expert testimony that he suffered from involuntary intoxication as the result of a combination of prescription and non-prescription drugs, combined with lack of sleep and previous alcohol use. Because defendant produced some evidence of involuntary intoxication, he was entitled to an instruction.

The failure to give an involuntary intoxication instruction was not harmless error. Where there is some evidence to support an affirmative defense instruction, the failure to give the instruction constitutes an abuse of discretion even if the evidence is conflicting. In addition, once defendant raises an affirmative defense, the State has the burden to prove guilt beyond a reasonable doubt on that issue as well as on all others. The absence of an involuntary intoxication instruction deprived the jury of a tool necessary to allow it to determine whether defendant was guilty of the charged crimes. Therefore, due process was violated. **People v. Alberts**, 383 Ill.App.3d 374, 890 N.E.2d 1208 (4th Dist. 2008) (**Hari** applies to cases on collateral review).

Addison v. People, 193 Ill. 405, 62 N.E. 235 (1901) The law holds men responsible for the natural consequences of their acts; thus, if the elements of a crime are present, it is no defense that the accused was voluntarily drunk.

Illinois Appellate Court

People v. Grayer, 2022 IL App (1st) 210808 Defendant's conviction of attempt vehicular hijacking was affirmed over a challenge to the sufficiency of the evidence. The evidence at trial showed that defendant was intoxicated and believed that his Lyft rideshare driver was taking him in the wrong direction. From the backseat, defendant reached forward, grabbed the driver's sleeve, and threatened to kill him. The driver stopped the vehicle at a gas station, exited, and called police. While waiting for the police, the driver observed defendant get into the driver's seat of the vehicle while in possession of a set of keys he had taken from the vehicle. The driver identified those keys as his house keys, not the keys to the vehicle.

On appeal, defendant argued that the State failed to prove that he had the intent to commit vehicular hijacking or that his actions constituted a substantial step toward the commission of that offense. Instead, defendant maintained that he was highly intoxicated and was simply trying to get home. The appellate court rejected defendant's argument.

First, the court clarified that voluntary intoxication is not an excuse for criminal conduct. In doing so, the court acknowledged, but found "misplaced," it's prior holding in **People v. Slabon**, 2018 IL App (1st) 150149, that a defendant's voluntary intoxication may be relevant where it is so extreme as to render defendant incapable of forming a specific intent. Instead, looking to 724 ILCS 5/6-3, courts have consistently held that voluntary

intoxication cannot be used as an affirmative defense to negate the element of intent. And, regardless, defendant's intoxication here was not so extreme that it would have excused his conduct.

Further, the court found that defendant committed a substantial step toward vehicular hijacking where he grabbed the driver's shirt, threatened to kill him, and subsequently attempted to start the vehicle (albeit with the driver's house keys). Defendant's conviction was affirmed.

People v. Slabon, 2018 IL App (1st) 150149 Under 720 ILCS 5/6-3, only involuntary intoxication is a permissible defense in Illinois. Evidence of voluntary intoxication may be relevant, however, if defendant is charged with a specific intent crime requiring proof of a specific mental element. It was unnecessary to determine whether aggravated battery of a nurse was a specific intent crime here because the trial evidence disproved any notion that defendant's voluntary intoxication prevented him from knowing that the victim was a nurse. A police officer, doctor, and the victim all testified that she identified herself as a nurse to defendant, and defendant's own testimony supported that conclusion. Further, defendant had been permitted to introduce evidence of his intoxication at his jury trial.

The court did not err in instructing the jury that voluntary intoxication is not a defense to aggravated battery. That was an accurate statement of the law, and it did not tell the jury that it could not consider the intoxication at all.

People v. McMillen, 2011 IL App (1st) 100366 Involuntary intoxication constitutes an affirmative defense where the intoxicated or drugged condition is involuntarily produced and results in a deprivation of substantial capacity to either appreciate the criminality of one's conduct or to conform such conduct to the requirements of the law. Under **People v. Hari**, 218 Ill.2d 275, 843 N.E.2d 349 (2006), an involuntary intoxication defense may arise from the unexpected and unwarned adverse side effects of prescription medication.

The Appellate Court concluded, however, that **Hari** does not authorize an involuntary intoxication defense where the defendant suffers adverse side effects from a combination of prescription medication and illegal substances which were knowingly consumed. In other words, "the knowing, or voluntary, ingestion of . . . illegal drugs precludes the use of the involuntary intoxication defense" even where the defendant also consumed prescription medication. "[T]he **Hari** holding does not support the proposition that mixing prescription medication with illegal drugs gives rise to the involuntary intoxication defense."

In any event, the **Hari** doctrine would not apply where the defendant consumed four prescription medications along with cocaine. **Hari** holds that an involuntary intoxication defense may arise where the defendant suffers an unanticipated reaction to prescription medication. The court concluded that because the adverse effects of mixing cocaine and prescription medications is well-known, and excessive cocaine use alone is commonly known to produce adverse side effects, "it is common knowledge that adverse side effects may result when cocaine is used along with four other prescription medications." Thus, defendant's reaction could not be said to be unanticipated.

The court added that the record showed that defendant had been on the prescription medication for at least six months, raising further doubts concerning any claim that the adverse effects of the medication were unknown to him.

Because defendant lacked a reasonable basis to present an involuntary intoxication defense based on the combination of cocaine and prescription medication, the trial court properly dismissed as patently without merit a post-conviction petition which argued that defendant had been deprived of his constitutional right to present a complete defense.

People v. Anderson, 325 Ill.App.3d 624, 759 N.E.2d 893 (4th Dist. 2001) Without deciding whether the defense of voluntary intoxication applies to aggravated criminal sexual assault, the court held that defendant could not raise the defense where his intoxication was not so extreme as to suspend his power of reason and render him incapable of intending to commit the offense. The court noted that defendant could recall the number of beers he had consumed, the time he left a bar, and the fact that he went to the victim's house. Defendant also stated that he used his lighter so he could see, described the furniture inside the house, and related several facts concerning the offense.

People v. Fuller, 91 Ill.App.3d 922, 415 N.E.2d 502 (1st Dist. 1980) The intoxication defense makes no provision for "diminished capacity," whereby a state of intoxication that does not "entirely suspend the power of reason" reduces the degree of an offense.

People v. Brumfield, 72 Ill.App.3d 178, 390 N.E.2d 589 (5th Dist. 1979) Before defendant's trial for rape, the State filed a motion *in limine* to bar evidence on intoxication or a drugged condition. The trial judge granted the motion, holding that neither voluntary nor involuntary use of drugs is a defense to rape.

Voluntary intoxication was not a defense, because rape is a general intent crime. However, involuntary intoxication is a defense. Furthermore, neither the State nor the trial judge had authority to question the propriety of the intoxication defense before trial. Thus, the "trial court's order granting the State's motion *in limine* before the admission of any evidence deprived the defendant of his fundamental right to defend himself."

§30-3
Involuntary Commitment
United States Supreme Court

Foucha v. Louisiana, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) Due process is violated by a statute permitting a person who has been acquitted by reason of insanity to be confined after his mental illness has been cured, solely because he is unable to establish that he is no longer dangerous to himself or others. A State practice of holding persons in mental institutions solely because they might be dangerous for reasons other than mental illness violates due process in three ways - the nature of the confinement is not sufficiently related to its purpose, civil commitment standards cannot be met since defendant is no longer mentally ill, and defendant cannot be held as punishment for the crime because, by enacting an insanity defense, the State has decided to relieve insane persons from criminal culpability.

McNeil v. Director, 407 U.S. 245, 92 S.Ct. 2083, 32 L.Ed.2d 719 (1972) Defendant who was convicted and sentenced for crime, and who was then referred to state institution to determine whether he should be committed for an indeterminate term, could not be confined by an *ex parte* order beyond the expiration of the sentence that had been imposed.

Jones v. U.S., 463 U.S. 354, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) Defendant who establishes by a preponderance of the evidence that he is not guilty by reason of insanity may be confined indefinitely in a mental institution, until he proves by a preponderance of the evidence that he has regained his sanity or is no longer a danger to himself or society, even if the commitment period is longer than the maximum sentence that could have been imposed had he been convicted.

Addington v. Texas, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) Civil commitment proceedings do not require application of the reasonable doubt standard. Due process is satisfied by use of the "preponderance of the evidence" standard.

O'Connor v. Donaldson, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975) A mere finding of "mental illness" cannot justify involuntary confinement of an individual. Without more, a State cannot constitutionally confine a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family or friends.

Boxtrom v. Herold, 383 U.S. 107, 86 S.Ct. 760, 15 L.Ed.2d 620 (1966) Unless the procedures for civil commitment are followed, equal protection is violated by commitment of a person found not guilty by reason of insanity beyond the time equivalent to the maximum prison term for the offense.

Lynch v. Overholser, 396 U.S. 705, 82 S.Ct. 1063, 8 L.Ed.2d 211 (1962) A person found not guilty by reason of insanity is not subject to mandatory commitment under federal law.

Illinois Supreme Court

People v. Pastewski, 164 Ill.2d 189, 647 N.E.2d 278 (1995) Defendants were both found not guilty of criminal charges by reason of insanity. 730 ILCS 5/5-2-4(b) provides that an insanity acquittee who is subject to involuntary admission may be committed for an indefinite period that:

> "shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity."

In determining the maximum period of involuntary commitment, the trial court relied on the fact that both defendants had prior criminal convictions and would have been eligible for extended term sentences had they been convicted. The trial court then based the maximum commitment period on the maximum extended term sentences.

People v. Palmer, 148 Ill.2d 70, 592 N.E.2d 940 (1992) Where defendants would have been eligible for extended term sentencing due to their prior criminal records, and not because of factors relating to their mental states at the time of the offenses, the trial court did not err by using extended term sentences to set the maximum period of involuntary commitment.

The trial judge has no discretion to set the maximum period of involuntary commitment as less than the maximum sentence for which defendant would have been eligible had he been convicted. Although 730 ILCS 5/5-2-4(b) provides that the trial court "shall determine the maximum period of commitment by an appropriate order," that provision contemplates that the trial court will perform what is "essentially a ministerial task" - setting the involuntary commitment period as the maximum authorized sentence less good time.

People v. Roush, 101 Ill.2d 355, 462 N.E.2d 468 (1984) The circuit court's actions in holding two directors of state mental institutions in criminal contempt following the escape of patients who had been committed following findings of not guilty by reason of insanity were

not warranted by the authority given to supervise persons found not guilty by reason of insanity. Although "[t]he public should be protected against escaping NGRI patients, . . . criminal contempt sentences and detailed orders supervising the patients' activities are not appropriate remedies based on the facts in this case."

People v. Tanzy, 99 Ill.2d 19, 457 N.E.2d 390 (1983) When determining the maximum term for which a defendant may be committed to the Department of Mental Health after having been acquitted by reason of insanity, both compensatory and statutory good time credits must be deducted.

People v. Valdez, 79 Ill.2d 74, 402 N.E.2d 187 (1980) Statute regarding proceedings after acquittal by reason of insanity did not violate equal protection by providing for judicial review of the Department of Mental Health's decision to release a person, though no such judicial review is required when a person is committed under the Mental Health Code. The additional safeguard of judicial review is justified by the "dangerousness demonstrated by the acts committed in the perpetration of the criminal offenses."

The General Assembly properly related the period of the above judicial review to the seriousness of the act involved, which is expressed in the sentence authorized by statute. The trial court is authorized to order the Department to implement a specific treatment plan for a defendant. However, the trial court's authority only extends to the particular defendant, and not to the general practices and procedures of the Department. Thus, the trial court erred by directing the Department to publish a memorandum regarding the admission and treatment of persons committed after acquittal by reason of insanity.

In re Stephenson, 67 Ill.2d 544, 367 N.E.2d 1273 (1977) The appropriate standard of proof in civil commitment under the Mental Health Code is "clear and convincing evidence," not proof beyond a reasonable doubt.

Illinois Appellate Court

People v. Grant, 295 Ill.App.3d 750, 692 N.E.2d 1295 (1st Dist. 1998) Under 730 ILCS 5/5-2-4(g), at a hearing on a facility director's recommendation for conditional release, the State has the burden to prove by clear and convincing evidence that release is inappropriate. Where the facility director recommended that defendant be released, the trial court erred by applying the preponderance of the evidence standard and "essentially plac[ing] the burden of proof on defendant" to show that release was appropriate.

To prevent a conditional release on the recommendation of a facility director, the State must show by clear and convincing evidence that defendant is subject to involuntary admission or in need of mental health services on an inpatient basis. A person is subject to involuntary admission if, due to a mental illness, he is: (1) reasonably expected to inflict serious physical harm upon himself or another in the near future, or (2) unable to provide for his basic physical needs.

Here, testimony of two forensic psychologists clearly showed that defendant was not a danger to himself or others. In addition, the State failed to exercise its right to request an independent psychiatric evaluation, and failed to call any expert witnesses or present any evidence. Because the State clearly failed to carry its burden, the trial court erred by denying release.

The trial judge erred by denying conditional release on the ground that defense witnesses could not guarantee that defendant would not react violently in a stressful

situation. The mere possibility that defendant might have difficulty adjusting to stress is an insufficient basis to deny conditional discharge.

People v. Bledsoe, 268 Ill.App.3d 869, 645 N.E.2d 411 (1st Dist. 1994) An insanity acquittee who is involuntarily committed and subsequently petitions for release is entitled, upon request, to an examination by an independent mental health professional.

People v. Carlson, 221 Ill.App.3d 445, 582 N.E.2d 215 (5th Dist. 1991) Statutes require that defendant be present at any involuntary admission hearing *unless* "his attorney waives his right to be present and the court is satisfied by a clear showing that the respondent's attendance would subject him to substantial risk of serious physical or emotional harm." Where the record gives no indication that defendant was present, the reviewing court must presume that defendant was not present and did not waive her right to be present.

People v. Spudic, 144 Ill.App.3d 1071, 495 N.E.2d 616 (4th Dist. 1986) Defendant was charged with felony theft and found not guilty by reason of insanity. He was then committed to the Department of Mental Health for five years, less good behavior credit. The five-year sentence was the maximum length of commitment allowable, because the longest sentence possible for felony theft (a Class 3 felony) is five years.

After serving more than the maximum term of 2½ years (five years minus day-for-day good time), defendant filed a motion for discharge. The trial judge denied the motion after finding that defendant was still in need of mental health services on an inpatient basis. Once defendant has served the maximum term he cannot be held under ¶1005-2-4. However, if a defendant who has served the maximum term of commitment has not yet recovered from his mental illness, he may be subject to civil commitment (Ch. 91½, ¶1-100 *et seq.*).

In re King, 114 Ill.App.3d 346, 448 N.E.2d 887 (1st Dist. 1983) Statute which places on petitioner the burden of proof to show a change in condition at a release hearing following commitment after a not guilty by reason of insanity verdict, does not violate due process or equal protection.

In addition, the "clear and convincing" standard of proof in the statute does not violate due process or equal protection.

People v. Tedford, 109 Ill.App.3d 195, 440 N.E.2d 329 (2d Dist. 1982) Defendant was charged with murder in 1977. The State ultimately stipulated that defendant was psychotic at the time of the offense, and in 1980 a judgment was entered finding him not guilty by reason of insanity. In 1981, defendant's maximum term of involuntary commitment was fixed at 24 years. The trial court erred in fixing the period of commitment by failing to allow defendant to elect to have the term fixed under the indeterminate sentencing scheme that had been in effect at the time of the offense. Under that statute, defendant would have been entitled to parole eligibility in 11 years and three months regardless of the maximum sentence imposed. The commitment order was modified to commit defendant to DMH for an indefinite period not to exceed 11 years, three months.

People v. Leppert, 105 Ill.App.3d 514, 434 N.E.2d 21 (2d Dist. 1982) On the day set for defendant's involuntary commitment hearing, defense counsel moved for a continuance because he had not yet received certain psychiatric reports. The motion was denied. Counsel received one report later the same day and another report shortly before its author testified.

The trial court abused its discretion by denying the continuance: "We think defendant was placed at an unfair disadvantage by requiring defendant to proceed with the hearing when he had so little time to study the physicians' reports which were required to be made available to him, and we remand for a new commitment hearing."

People v. Czyz, 92 Ill.App.3d 21, 416 N.E.2d 1 (1st Dist. 1980) The State failed to prove by clear and convincing evidence that defendant (who was found not guilty of murder by reason of insanity) was in need of mental treatment. The expert witnesses did not testify that defendant suffered from a mental disorder at the time of the hearing, but did testify that "defendant did not represent a threat to himself or to the community." Under these circumstances, the trial court's finding that defendant was in need of mental treatment was not supported by clear and convincing evidence.

People v. Reliford, 65 Ill.App.3d 525, 382 N.E.2d 72 (1st Dist. 1978) Due process was violated where defendant was institutionalized merely because he was mentally retarded.

People v. Sciara, 21 Ill.App.3d 889, 316 N.E.2d 153 (1st Dist. 1974) The need for mental treatment must be established by clear and convincing evidence. The order finding defendant in need of mental care was reversed because there was insufficient proof that, due to mental illness, defendant was unable to safeguard herself against physical injury or provide for her own needs.

People v. Bradley, 22 Ill.App.3d 1076, 318 N.E.2d 267 (1st Dist. 1974) A medical opinion that an individual suffers from a mental illness is insufficient to sustain commitment. Instead, there must be an explicit medical opinion that the individual is reasonably expected to harm himself or others or will be unable to care for himself.

Due process does not require a jury trial in commitment proceedings. A jury is required only where demanded by the patient, a relative or defense counsel.

§30-4
Guilty But Mentally Ill
Illinois Supreme Court

People v. Manning, 227 Ill.2d 403, 883 N.E.2d 492 (2008) Defense counsel was not ineffective for failing to advise a guilty plea defendant of the possibility of pleading guilty but mentally ill. Furthermore, defendant's plea was not involuntary despite counsel's failure to give such advice.

People v. Urdiales, 225 Ill.2d 354, 871 N.E.2d 669 (2007) Where defendant attempted to plead guilty but mentally ill but agreed to a hearing on whether he suffered from a "mental illness," the preponderance of the evidence standard was applicable. Although guilty pleas are usually evaluated by whether there is a factual basis for the plea, a contested hearing is not similar to a traditional guilty plea. Because a defendant who goes to trial must establish by a preponderance of the evidence that he or she was mentally ill (see 725 ILCS 5/115-3(c)(3)), the same standard should apply in a contested hearing to determine whether the trial court will accept a plea.

The trial court did not abuse its discretion by rejecting the guilty but mentally ill plea; defense experts gave conflicting diagnoses, and the trial court found the testimony of a prosecution expert to be more credible. Defendant's subsequent conviction and death

sentence were affirmed.

People v. Lantz, 186 Ill.2d 243, 712 N.E.2d 314 (1999) The guilty but mentally ill statute does not violate due process by placing conflicting burdens on the defense or by improperly encouraging compromise verdicts, and does not violate equal protection.

People v. Kaeding, 98 Ill.2d 237, 456 N.E.2d 11 (1983) The Court upheld the validity of the guilty but mentally ill sentencing statute (Ch. 38, ¶1005-2-6). See also, **People v. DeWit**, 123 Ill.App.3d 723, 463 N.E.2d 742 (1st Dist. 1984) (upholding validity of the guilty but mentally ill statute (Ch. 38, ¶115-4(j)).

Illinois Appellate Court

People v. Marcus, 2023 IL App (2d) 220096 Defendant pled guilty but mentally ill to one count of first-degree murder in exchange for the dismissal of other charges and a sentence of 45 years of imprisonment. Subsequently, defendant filed a post-conviction petition alleging ineffective assistance of counsel for pressuring defendant to forego an insanity defense and failing to inform him that two mental health experts opined that an insanity defense was supported. Defendant alleged that he would not have pled guilty and would have insisted on going to trial had he known about the expert opinions. Following an evidentiary hearing, the trial court denied defendant's petition.

In the guilty plea context, counsel renders deficient performance where he fails to ensure that defendant's plea is knowing and voluntary. To establish prejudice, defendant must show that there was a reasonable probability that, absent counsel's deficient performance, he would not have pled guilty and instead would have chosen to proceed to trial.

The trial court's denial of defendant's petition was not manifestly erroneous. Defendant's claim that defense counsel failed to disclose expert opinion on the issue of insanity was contradicted by defense counsel's testimony as well as defendant's own statements, during the plea hearing, that he had reviewed one expert's report, had discussed with counsel his ability to raise an insanity defense, and had chosen not to pursue that defense. Defendant repeatedly confirmed that he understood the court's questions at the plea hearing and did not have any questions of his own. Further, it was not deficient performance for counsel to advise defendant that obtaining an insanity acquittal would be a difficult task. Counsel's advice in that regard was reasonably competent and was not legally erroneous.

Even assuming deficient performance by counsel, defendant failed to establish prejudice. The record overwhelmingly supported the conclusion that defendant did not want to take his case to trial. Counsel discussed the possibility of an insanity defense and had defendant evaluated by two separate experts. But, defendant pushed to have his case resolved in a timely fashion and told the experts that he did not want to go to trial because he wanted to spare his daughter from that process. And, at the plea hearing, the court confirmed that defendant did not wish to raise an insanity defense. Accordingly, the appellate court affirmed the trial court's denial of defendant's petition.

People v. Baker, 253 Ill.App.3d 15, 625 N.E.2d 719 (1st Dist. 1993) Defendant raised an insanity defense to charges he had murdered his parents. The State presented no expert testimony concerning sanity, but the defense presented the testimony of four psychiatrists who believed that defendant had been legally insane at the time of the offenses. There was also lay testimony concerning defendant's history of psychiatric treatment and unusual behavior around the time of the offense. The trial court found defendant guilty but mentally

ill, and imposed a natural life sentence. That verdict was contrary to the manifest weight of the evidence.

Although the trier of fact has discretion to reject expert testimony and rely on lay testimony of sanity, the unexplained decision to do so was reversible error under these circumstances. All four of the experts agreed in their diagnoses, and none of the experts had failed to consider relevant information. Furthermore, three of the four experts were employed by the Psychiatric Institute, an arm of the circuit court, and had not been retained by defendant.

In contrast, there was only slight evidence of sanity. Although defendant fled the state after the crime, his actions were consistent with his insane delusion that his life was in danger and did not necessarily suggest consciousness of guilt. Furthermore, although two police officers claimed that defendant did not act abnormally two days after the offense, they also testified that he talked very rapidly, referred to "methods of religion" and made the apocalyptic statement that the "father dies before the son." In addition, there was evidence that defendant appeared confused after his arrest, said people were scratching inside his chest, and asked for a gun to shoot himself. Defendant was immediately placed in a psychiatric ward after he was extradited to Illinois.

Because the evidence of insanity was overwhelming, the cause was remanded with instructions to enter an acquittal by reason of insanity.

People v. Engram, 193 Ill.App.3d 511, 549 N.E.2d 1333 (2d Dist. 1990) Though the issue of sanity was raised, the trial court did not err by failing to provide the jury with instructions and a verdict form on that concept; neither the State nor the defense requested such instructions or verdict.

People v Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767 (1st Dist. 1986) At a bench trial, defendant presented an insanity defense. The trial judge did not directly address the claim that defendant was mentally ill. The judgment of guilty was contrary to the manifest weight of the evidence, and the matter was remanded for entry of a judgment of guilty but mentally ill and resentencing thereon.

Both the State and defense psychiatrists “submitted considerable evidence showing that defendant was suffering from a substantial disorder of mood or behavior which impaired his judgment,” and that he therefore suffered from a “mental illness.” The State psychiatrist testified that defendant had suffered from a mental “disorder” for many years.

People v. Grice, 121 Ill.App.3d 567, 459 N.E.2d 1122 (3d Dist. 1984) At her trial for retail theft, defendant presented an insanity defense. Two experts testified for the defense, and voiced the opinion that defendant was suffering from a mental disease (kleptomania) and was unable to conform her conduct to the requirements of law. A State expert testified that defendant had a “character disorder,” was not a kleptomaniac, and was not mentally ill at the time of the offense. The jury returned a verdict of guilty but mentally ill.

The jury was properly instructed on guilty but mentally ill because the jury “was free to accept part of each expert’s testimony, and reject the other parts of the testimony.” The State was not required to present testimony indicating that defendant was mentally ill, but not insane, in order to have the instruction given.

People v. Dalby, 115 Ill.App.3d 35, 450 N.E.2d 31 (3d Dist. 1983) Defendant was properly found guilty but mentally ill though the offense occurred before the effective

date of the guilty but mentally ill statutes. There was no *ex post facto* limitation on the application of the guilty but mentally ill verdict to defendant.

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